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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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PEARNE & GORDON LLP		
1801 EAST 9TH STREET		
SUITE 1200		
CLEVELAND, OH 44114-3108		

EXAMINER	
OSANU, FELIX C	

ART UNIT	PAPER NUMBER
3609	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/520,335

Applicant(s)

KHAN, ANWA

Examiner

Felix Osanu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 1/5/05.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 July 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 1/5/05.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application
- ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 5 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 5, the phrase "as defined above" renders the claim indefinite because it is unclear whether the claim is dependent on claims 1, 2 or 3 or if it is an independent claim thereby rendering the scope of claim 5 unascertainable. See MPEP § 2173.05(d).

For examining purposes, it is viewed that claim 5 is a dependent claim of claim 1 and also an independent claim. Consequently, claim 5 is further rejected as in paragraphs 4 & 5 below.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 4 & 5 rejected under 35 U.S.C. 102(b) as being anticipated by Zinn (U.S. 3611653). For Claim 1, Zinn shows stud for wall structure comprising a central stud member having opposed faces and an acoustic support member mounted on each face of the central stud and outer stud members on the outer side of the acoustic member (figures 1-4, claim 1

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& lines 1-49). For claim 4, Zinn shows acoustic support member seated in recess in the face of the central stud (figure 2 & column 4, line 20-40).

Claim 5 (dependent on claim 1), Zinn teaches a wall structure comprising a plurality of spaced apart wall studs with wall sheeting (board) connecting each side of the adjacent wall studs and insulating material between the wall sheeting (figure 1 & column 4, lines 41-15 and claims 6).

5. If Claim 5 is an independent claim, Claim 5 rejected under 35 U.S.C. 102(b) as being anticipated by MacKinnon, et al (U.S. 34471592). MacKinnon, et al teaches a wall structure comprising a plurality of spaced apart wall studs with wall sheeting connecting each side of the adjacent wall studs and insulating material between the wall sheeting (figures 2, 3 & column 2, lines 18-25 & claim 11d).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 2 rejected under 35 U.S.C. 103(a) as being unpatentable over Zinn (U.S. 3611653) in view of Fortin (U.S. 4023323). Zinn shows stud for wall structure comprising elements as described in paragraph 4 above but does not show acoustic member with spaced apart arms. Fortin discloses a wall structure comprising acoustic support having arms terminating in inwardly directed flanges (figures 1, 5, 6, 8 & claim 1). It would have been

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obvious and well within the level of ordinary skills in the art at the time of invention was made to modify the structure of Zinn to include arms terminating in inward flanges structure of Fortin in order to secure the arms further in the studs.

8. Claim 3 rejected under 35 U.S.C. 103(a) as being unpatentable over Zinn (U.S. 3611653) in view of Fortin (U.S. 4023323) as applied to claim 2 in paragraph 7 above, and further in view of MacKinnon, et al (U.S. 4471592). Zinn and Fortin teach structures as disclosed above. However, neither Zinn nor Fortin disclose outer stud member having enlarged head located in recess and held by flanges. The patent to MacKinnon discloses such a configuration as shown in figures 2 and 3. It would have been obvious and well within the level of ordinary skills in the art at the time of invention was made to provide the combined stud wall structure of Zinn and Fortin with an outer stud member with enlarged head of MacKinnon. The suggestion /motivation for doing so would have been to provide additional alignment of the stud members.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Horn, et al (U.S. 5787651), Zinn (U.S. 3324625), Becker (U.S. 3834096 & 3990202), O'Brien (U.S. 4437282), Murphy (U.S. 4756134), Glockenstein (U.S. 4881352), Boyer (U.S. 5609006), Gelin (U.S. 5787651), Boyer et al (U.S. 6412249).


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Felix Osanu whose telephone number is 571-270-3659. The examiner can normally be reached on M-TH & alt. F (8AM - 5PM) EST.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David V. Bruce can be reached on 571-272-2487. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Felix Osanu
Examiner
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DAVID BRUCE
SUPERVISORY PATENT EXAMINER

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